Petitioner would hardly contend that paragraph 4 of the order compels it to require its retailer customers not to compete with each other, or that paragraph 5 compels it to require its jobber customers not to resell at retail. It makes no objection to either of those paragraphs; yet paragraph 6 only prohibits doing by indirection what paragraph 5 prohibits doing directly.

There is nothing startling about prohibiting a supplier from selling to wholesalers and retailers in the same sales area at a differential so great as to enable the wholesalers to undersell their supplier, where the retailer customers of the supplier cannot buy from wholesalers but are in direct competition with the wholesaler's customers. If the supplier and its wholesalers were in fact competitors it would not be good business for a supplier whose principal distribution is direct to retailers to sell to wholesalers at a price which would enable the wholesalers to take away the retailer customers of the supplier. In this case it has been demonstrated that there is and can be no real competition between petitioner and its wholesalers.

If the prohibition contained in paragraph 6 were not included in this order there would be nothing to prevent Ned's Auto Supply Company from transferring its business to Citrin-Kolb Oil Company and purchasing Red Crown gasoline from Citrin-Kolb at one cent a gallon below the tank wagon price, delivered at Ned's stations. Ned's would obtain substantially the same competitive advantage over other retailers which it now obtains by purchasing in tank car quantities from petitioner. Petitioner would achieve the same result which it now obtains, merely using Citrin-Kolb as a conduit for sales to Ned's.

While the modification of paragraph 6 made by the Court of Appeals does not materially weaken the order, the limitation of enforcement to "such circumstances as are

easonably calculated to impute knowledge to the respondent" introduces a less than definite standard which is undesirable. We submit that this modification was unnecessary to accomplish the purpose for which it was intended. As above pointed out, it is no justification for discrimination that the seller did not know that a supposed wholesaler customer was reselling at retail; and the burden should also be on the seller to keep himself informed as to whether a wholesaler customer *engages in the practice* of reselling to retailers who compete with petitioner's direct customers at prices below that charged the latter by petitioner. Perhaps it is easier for a seller to know at what level of competition his customers resell than to know their pricing practices, but that is a matter of degree. Petitioner's two largest competitors in Detroit avoid this dilemma by selling only to retailers at tank wagon prices (R. 2129-30, 333).

The opinion below states that "Under the order as drawn, the petitioner would be liable if afterwards the wholesaler should resell at a price lower than the petitioner charged its retailers." This objection could be sufficiently obviated by inserting the words "engages in the practice of reselling" in place of the word "resells", in the middle of the paragraph. The words added by the Court of Appeals could then be, and we think they should be, taken out.

The statement that compliance with this decree by oil companies selling in interstate commerce would injure jobbers generally and "deal a death blow" to those whose suppliers sell to retailers in the same area, is absurd. The decree will affect only those jobbers who demand an unfair price advantage in reselling at retail in competition with retailers paying a higher price for the same brand of gasoline, or who use their differential to give such an advan-

tage to certain of their customers with their supplier's consent. Certainly no one would suppose that a major supplier like petitioner, the success of whose business depends on the volume of its sales to retailers at tank wagon prices, and who has an enormous investment in service station properties, would permit its own wholesalers to undersell it except to such controlled extent as it deems for its own benefit.

The decree herein benefits the 100 or more retailer customers of Wayne Oil Company, Stikeman Oil Company, and Citrin-Kolb Oil Company, (except the few given a discriminatory price by Citrin-Kolb) to the same extent that it benefits petitioner's 350 retailer customers, other than Ned's.

The jobbers most directly affected by the discriminatory practices at which this order and decree are aimed, and best able to appraise the effect of said order and decree on the conduct of their business, are the Michigan jobbers represented by the Michigan Petroleum Association, one of the associations filing this brief. In view of the unwarranted statements made in the *amicus curiae* brief filed herein on behalf of certain jobber associations in other states, we call the Court's attention to the resolution adopted by the Executive Committee of Michigan Petroleum Association in November, 1945, shortly after the issuance of the Commission's original order in this case:

> "The Committee made a thorough study of the provisions of the opinion and order of the Commission and was of the firm belief that such order will have the positive effect of preventing destructive and unfair competition and will thereby maintain the existence of the small petroleum operator whose enterprise, like all small business, is the backbone of America.

"A survey of the Michigan industry reveals a comparatively few jobbers operate retail stations of their own, but that those who do maintain retail stations can easily come within the terms of the order by leasing such stations out to private individuals. The Michigan group denounces the attempts of some factions in the petroleum industry which have sought to becloud the real meaning of the order by presenting certain ghost-like hazards to the jobbing trade which do not exist. It should be pointed out that the FTC order seeks to do just one thing—to prevent unfair competition between retail outlets, and does not in any way erect hazards to any part of the petroleum marketing picture.

"In the opinion of the Committee, there is no bogey man in the order which will in any way disrupt or hamper any present jobber wholesale operations." (Official Report of Proceedings before the Federal Trade Commission, Docket No. 4389, In the Matter of Standard Oil Company, April 25, 1946.)

Conclusion.

The decree of the United States Court of Appeals for the Seventh Circuit should be affirmed.

Respectfully submitted,

CYRUS AUSTIN,
Attorney for Retail Gasoline Dealers Association of Michigan, Inc., Michigan Petroleum Association, Inc., National Congress of Petroleum Retailers, Inc.

December 30, 1949.

APPENDIX.

Retail Gasoline Dealer Associations Affiliated in the National Congress of Petroleum Retailers.

Alabama Independent Service Stations Association
15 Steiner Building
Birmingham 3, Alabama

California Service Station Operators Association
1252 Pine Street
Martinez, California

Petroleum Retailers of San Francisco, Inc.
119 New Montgomery Street
San Francisco 5, California

New Haven Retail Gasoline Dealers Association
185 Church Street
New Haven, Connecticut

Retail Gasoline Dealers Association, Inc.
3708 New Hampshire Avenue, N.W.
Washington 10, D. C.

Florida Gasoline Retailers Association
Pensecola and Adams Avenue
Tallahassee, Florida

Georgia Association of Petroleum Retailers, Inc.
204 Watkins Building
Decatur, Georgia

Gasoline Retailers Association of Metropolitan Chicago
8 North Ogden Avenue
Chicago, Illinois

Alton Association of Petroleum Retailers
1000 East Broadway Avenue
Alton, Illinois

Gasoline Retailers Association, Inc. of Fort Wayne
124 West Wayne Street, Room 226
Fort Wayne, Indiana

Adams County Gasoline Retailers Association
13th and Monroe Streets
Decatur, Indiana

Gasoline Retailers of Indiana
124 West Wayne Street, Room 226
Fort Wayne, Indiana

Service Station Association of Louisiana, Inc.
213 N. Broad Street
New Orleans, Louisiana

Retail Gasoline Dealers Association of Michigan, Inc.
205 East Adams Avenue
Detroit 26, Michigan

Ramsey County Petroleum Retailers Association
501 New York Building
St. Paul 1, Minnesota

Associated Petroleum Retailers of Greater St. Louis
820 Missouri Insurance Building
705 Chestnut Street
St. Louis 1, Missouri

Passaic County Gasoline Retailers Association
420 East 31st Street
Paterson, New Jersey

Retail Gasoline Dealers Association of Monroe County, New York
130 Franklin Square
Rochester 5, New York

Buffalo-Suburban Gasoline Retailers Association
528 White Building
Buffalo, New York

Ohio Independent Gasoline Dealers Association
743 Spitzer Building
Toledo, Ohio

Independent Gasoline Dealers, Inc.
1230 Wick Avenue
Youngstown, Ohio

Petroleum Retailers Association of Oklahoma
P. O. Box 952, Harn Building
Oklahoma City, Oklahoma

Associated Retail Gasoline Dealers of Alleghany County
5991 Center Avenue
Pittsburgh, Pennsylvania

Petroleum Retailers Association of Pennsylvania
1617 West Street
Homestead, Pennsylvania

Cambria County Retail Gasoline Dealers Association
204 Haynes Street
Johnstown, Pennsylvania

Erie County Gasoline Retailers Association
518 Commerce Building
Erie, Pennsylvania

Lawrence County Service Stations Association
1004 North Jefferson Street
New Castle, Pennsylvania

Petroleum Retailers of Philadelphia, Inc.
507 North Broad Street
Philadelphia, Pennsylvania

Rhode Island Retail Petroleum Dealers Association
246 Central Avenue
Pawtucket, Rhode Island

Chattanooga Association of Petroleum Retailers
1117 Hixson Road
Chattanooga, Tennessee

Utah Association of Petroleum Retailers
1086 East 21st Street, South
Salt Lake City, Utah

Washington Gasoline Dealers Association, Inc.
325 Republic Building
Seattle, Washington

West Virginia Gasoline Dealers Association
Huntington Chapter
414—11th Street
Huntington, West Virginia

Retail Gasoline Dealers Association of West Virginia
Victor, West Virginia

Marion County Retail Gasoline Dealers Association
415 Fairmont Avenue
Fairmont, West Virginia

Retail Gasoline Dealers Association of Wisconsin, Inc.
4652 North 28th Street
Milwaukee 9, Wisconsin

Retail Gasoline Dealers Association of Milwaukee, Inc.
519 North 16th Street
Milwaukee 3, Wisconsin

Texas Service Stations Associated
Citizens National Bank Building
Brownwood, Texas